

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Simon Wang	Team: Squad #7	CCRB Case #: 201801759	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 02/08/2018 1:00 AM	Location of Incident: § 87(2)(b) § 87(2)(b)	Precinct: 94	18 Mo. SOL 8/8/2019	EO SOL 8/8/2019	
Date/Time CV Reported Sat, 03/03/2018 5:36 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 03/03/2018 5:36 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Guida	01516	932756	094 PCT
2. Officers			094 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Nicholas White	19311	962872	094 PCT
2. SGT Roxana Hogan	00651	947922	094 PCT
3. POM Jonathan Hernandez	26164	963883	094 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Guida	Abuse: Police Officer Michael Guida entered § 87(2)(b) § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B. Officers	Abuse: Officers entered § 87(2)(b) § 87(2)(b) in Brooklyn.	§ 87(2)(b)

Case Summary

On March 3, 2018, § 87(2)(b) § 87(2)(b) filed the following complaint with the CCRB via the online website. On February 8, 2018, at approximately 1:00 a.m., § 87(2)(b) § 87(2)(b) was engaged in a dispute with his mother § 87(2)(b) § 87(2)(b) while at home at § 87(2)(b) § 87(2)(b) in Brooklyn. § 87(2)(b) § 87(2)(b) called 911 and alleged that she was injured. Sgt. Roxana Hogan, PO Michael Guida, PO Jonathan Hernandez and PO Nicholas White of the 94th Precinct responded to the 911 call. PO Guida and PO Hernandez entered § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b)s apartment, followed by Sgt. Hogan and PO White (**Allegations A and B – Abuse of Authority:** § 87(2)(g) § 87(2)(b) § 87(2)(b) was placed under arrest by PO Guida with a charge of assault with intent to cause injury. § 87(2)(b) § 87(2)(b)

There was no video of this incident.

An attorney was consulted for this case.

Findings and Recommendations

Identification of Subject Officers

Considering that it is undisputed that the entry decision, and the consent conversation was had by PO Guida, rather than his significantly less tenured partner, PO Hernandez, Allegation A is pleaded against PO Guida for his role in the entry. Allegation B is pleaded against “Officers” from the 94th Precinct for their ancillary role in entering the apartment.

Allegation (A) Abuse of Authority: Police Officer Michael Guida entered § 87(2)(b) § 87(2)(b) in Brooklyn.

Allegation (B) Abuse of Authority: Officers entered § 87(2)(b) § 87(2)(b) in Brooklyn.

An attorney was consulted regarding allegations A and B.

§ 87(2)(b) § 87(2)(b) stated (**Board Review 1**) that he and his mother reside together in a one bedroom apartment on the third floor. § 87(2)(b) § 87(2)(b) sleeps in the bedroom while § 87(2)(b) § 87(2)(b) sleeps in the living room.

On February 8, 2018, § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b) were alone in their apartment and had a dispute. § 87(2)(b) § 87(2)(b) denied that there was any physical altercation. § 87(2)(b) § 87(2)(b) left the apartment stating that she was going to the 94th Precinct stationhouse. § 87(2)(b) § 87(2)(b) remained home. Upon returning to the apartment, § 87(2)(b) § 87(2)(b) picked up the phone and stated she was calling 911. In her phone statement with the CCRB (**Board Review 2**), § 87(2)(b) § 87(2)(b) stated that she and § 87(2)(b) § 87(2)(b) had an argument and that § 87(2)(b) § 87(2)(b) struck her on the shoulder. In the 911 call (**Board Review 3**) she stated that § 87(2)(b) § 87(2)(b) struck her in an unspecified fashion but stated that her eye was injured. During the call, § 87(2)(b) § 87(2)(b) could be heard in the background yelling that she was lying. § 87(2)(b) § 87(2)(b) stated that he was awake in his bedroom and heard § 87(2)(b) § 87(2)(b) calling 911, but believed that she was faking the phone call. § 87(2)(b) § 87(2)(b) did not know when the police came to

the apartment. He did not see them enter the apartment and did not hear the officers until PO Guida and PO White entered the bedroom. PO Guida asked § 87(2)(b) what happened and he stated that “nothing” had happened. PO Guida and PO White told § 87(2)(b) to get his identification and stated that he had to come with them. § 87(2)(b) was escorted downstairs and out of the building where he was handcuffed. § 87(2)(b) was only told that he was arrested for a misdemeanor, but was released from central booking without any charges.

§ 87(2)(b) stated that police officers knocked on the door and she answered the door. She did not recall whether the police officers asked to enter the apartment. § 87(2)(b) stated she did not specifically recall what transpired at the door but stated that she invited the police officers inside the apartment and denied that police officers entered the apartment without her permission. § 87(2)(b) stated that she told the District Attorney she made a mistake and later asked that no charges be made against her son. During her phone statement to the CCRB, § 87(2)(b) stated that the police officers were friendly to her and she believed they did nothing wrong.

PO Guida stated (**Board Review 4**) that when § 87(2)(b) went to the 94th Precinct stationhouse, he was called to respond to the stationhouse and speak to her. Sgt. Hogan was also present and saw PO Guida speaking to § 87(2)(b) there. § 87(2)(b) asked PO Guida to “scare” her son by speaking to him, but refused to say what had transpired between her and her son. PO Guida informed § 87(2)(b) that he would need to know what transpired and then determine whether a crime had been committed before taking any police action. § 87(2)(b) declined to say anything further and stated that she would return home. After § 87(2)(b) called 911, PO Guida received a radio report of a family dispute at § 87(2)(b)'s address. PO Guida stated that he and PO Hernandez were the first police officers to arrive at the building and were met by § 87(2)(b) in the lobby of the building. § 87(2)(b) told them that § 87(2)(b) had struck her in the head and invited the officers upstairs. PO Guida did not recall whether § 87(2)(b) or § 87(2)(b) opened the door to the apartment, but § 87(2)(b) invited the officers inside. PO Hernandez stated (**Board Review 5**) that § 87(2)(b) opened the door to the apartment and invited the police officers inside and requested that they remove § 87(2)(b) from the apartment. PO Hernandez stated that he was a trainee, who had graduated from the academy four months prior to this incident. PO Hernandez entered the apartment and observed the actions of other officers. Sgt. Hogan stated (**Board Review 6**) that she and her operator PO White arrived after PO Guida and PO Hernandez were already inside the apartment. PO White did not recall (**Board Review 7**) whether PO Guida and PO Hernandez entered the apartment before them or at the same time, and did not recall the process of how he and other officers gained entry to the apartment.

PO Guida stated that he stepped inside the apartment and stood in the kitchen and dining area. He saw § 87(2)(b) standing in a bedroom. PO Guida asked § 87(2)(b) what happened and § 87(2)(b) responded that “nothing happened.” PO Guida asked § 87(2)(b) to stay in the room. PO White stated that PO Guida asked him to watch § 87(2)(b) which he did by standing next to him. PO Guida then spoke to § 87(2)(b) in the kitchen. § 87(2)(b) filled out a Domestic Incident Report (**Board Review 8**), stating that § 87(2)(b) struck her in the head. PO Guida stated that § 87(2)(b) complained of pain in the head and she had swelling on her head underneath her hair. An ambulance was dispatched by 911, but § 87(2)(b) declined treatment. PO Guida stated that he arrested § 87(2)(b) for assault (**Board Review 9**) based upon § 87(2)(b)'s allegations. PO Guida decided not to handcuff § 87(2)(b) inside the apartment because

he did not want him to walk down the stairs in handcuffs. § 87(2)(b) was asked to collect his identification and dress in warmer clothes before he was escorted out of the building. § 87(2)(b)

§ 87(2)(b) All of the officers denied that § 87(2)(b) expressed any desire for them to leave the apartment.

The police cannot effectuate a routine felony arrest inside a suspect's home without an arrest warrant. Payton v. New York, 445 U.S. 573 (1980) (**Board Review 11**). However, if "a person with ostensible authority consents" to allow the police to enter the home, the Payton rule is not violated. People v. Read, 74A.D.3d 1245 (2010) (**Board Review 12**).

§ 87(2)(b), § 87(2)(g)

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Civilian and Officer CCRB Histories

- This is the first and only CCRB complaint to which § 87(2)(b) § 87(2)(b) has been a party (**Board Review 13**).
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- PO Guida has been a member of service for 15 years and has been a subject in three complaints and three allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) § 87(2)(b) declined to mediate this complaint.
- As of July 24, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint.
- According to the Office of Court Administration, § 87(2)(b) § 87(2)(b) has no history of convictions in New York City (**Board Review 14**).

Squad No.: 7

Investigator: Inv. Simon Wang

	Signature	Print Title & Name	Date
Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date